IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2184 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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SHANKER CHEMICAL M/S SHANKER CHEMICAL INDU. - Appellant(s)
Versus
MAHALAXMI FABRICS MILKS PVT LTD - Defendant(s)

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Appearance :

MR HARDIK C RAWAL for Appellant(s) : 1,MRS MH RAWAL for Appellant(s) : 1,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/05/2007

ORAL JUDGMENT

1. This First Appeal is filed by the appellant-original plaintiff challenging the judgment and

decree passed by the learned City Civil Court, Ahmedabad dated 04.01.2005 passed in Civil Suit No.1141 of 1996 in dismissing the said suit.

2. The appellant-Original Plaintiff filed original Civil Suit No.1141 of 1996 in the City Civil Court, Ahmedabad for recovery of the alleged outstanding sum of money from the defendant.

3. The opponent-original defendant appeared in the proceedings and contested the suit challenging the maintainability of the suit on the ground that name of plaintiff as shown in the cause title of the plaint and the name of the plaintiff as appearing in the registration extract produced and relied upon by the plaintiff itself are two different and distinct entities, in as much as the plaint indicates that the plaintiff is one “Shanker Chemical” whereas the registration extract indicates that the firm stands in the name of “Shanker Chemical Industries”. The very registration of the plaintiff firm itself came to be challenged. On merits also the suit came to be resisted. The learned Trial Court framed issues at Exh.35 and one of the issue was “Does the defendant

prove that the suit in its present form is not maintainable at law ?". The learned Trial Court held the aforesaid issue in affirmative and did not give any specific finding with regard to other issues. The learned trial Court considered Section 69(2) of the Indian Partnership Act. The learned Trial Court also considered the fact that the plaint was signed on 01.03.1996 by one Shri C.B.Patel who has so signed as partner of the said firm. However, considering the registration extract produced by the plaintiff at Exh. 38, the name of said Shri C.B.Patel was entered in the Register of Firms with the Registrar of Firms only consequent to application dated 18.10.2002. Considering above and the defect arising on account of non-compliance of the provisions contained in Section 69 of the Act, the learned Trial Court held that name of said Shri C.B.Patel was not reflected in the Register of Firms as a partner of the plaintiff firm when the suit was instituted and Section 69(2) of the Indian Partnership Act clearly bars institution of a suit unless the firm is registered and the person or persons suing are shown in the Register of Firms as partners of the firm and accordingly, the trial Court dismissed the suit on the ground of non-compliance of the provisions

contained under Section 69(2) of the Indian Partnership Act. Being aggrieved and dissatisfied with the impugned judgment and decree passed by the learned City Civil Court and dismissing the aforesaid suit, the appellant has preferred the present First Appeal.

4. This Court heard learned Advocate appearing on behalf of the appellant-original plaintiff at length and also considered the Record and Proceedings which was called from the City Civil Court, Ahmedabad. Learned Advocate appearing on behalf of the appellant has also taken this Court to the relevant evidence as well as documentary evidence.

5. Shri Hardik Raval, learned Advocate appearing on behalf of the appellant – original plaintiff has vehemently submitted that Shri C.B.Patel who has signed the plaint as a partner of the plaintiff – firm was in fact inducted as new partner from 01.04.1992 and in fact necessary entry in the office of Register of Firms was made on 28.10.2002 making entry that Shri C.B.Patel is inducted as new partner with effect from 01.04.1992.

It is submitted that considering the certificate issued by the Register of Firms dated 28.10.2002, which was produced on record, the learned Trial Court is not justified in dismissing the suit on the ground that considering Section 69 of the Indian Partnership Act, the suit is not maintainable. It is submitted that the suit was instituted on 01.03.1996 and at the relevant time as such partnership firm “M/s. Shankar Chemicals Industries” was dissolved and was run by Shri C.B.Patel as sole proprietor. However, unfortunately said Shri C.B.Patel signed the documents as proprietor of M/s. Shankar Chemicals Industries bona fide but because of the inadvertence of the learned Advocate appearing on behalf of the plaintiff aforesaid document was not produced on record before the trial Court. It is submitted that even otherwise as Shri C.B.Patel was in fact inducted as partner since 1992 and the same was reflected in the certificate dated 28.10.2002, the judgment and decree passed by the learned Trial Judge dismissing the suit is absolutely illegal and erroneous.

6. Shri Raval, learned Advocate appearing on behalf of the plaintiff has relied upon the decision of the Hon'ble Supreme Court in the case of ***Sharad***

Vasant Kotak and Ors. V/s. Ramniklal Mohanlal Chawda and Anr. reported in ***(1998) 2 SCC 171*** as well as decision in the case of ***Gwalior Oil Mills v/s. Supreme Industries*** reported in ***(1999) 9 SCC 113.*** He has also relied upon the decision of the Hon'ble Supreme Court in the case of ***Raptakos Brett & Co. Ltd. v/s. Ganesh Property*** reported in ***(1998) 7 SCC 184.***

7. Heard the learned Advocate appearing on behalf of the appellant – original plaintiff and gone through the Record and Proceedings of the trial Court. Considering the same, following facts emerges.

The Suit came to be filed by the original plaintiff- Shanker Chemicals as partnership firm. The plaint was signed by Shri C.B.Patel as a partner. The suit was filed in the year 1996 more particularly on 01.03.1996. It is the case on behalf of the plaintiff that there was change in the partnership and Shri C.B.Patel was inducted as a partner in the year 1992 more particularly on 01.04.1992. Application for change in the partnership inducting Shri C.B.Patel as

partner was made in the Office of Register of Firms by way of application dated 18.10.2002 and the certificate in “Form – G” issued by the Register of Firms is produced at Exh. 38. As per the Entry dated 18.10.2002, it is noted as under:

> “As per party's 'E' application received on 18.10.2002 (1) Shri Chandrakant Bhagwanbhai Patel of 633, Nagarvada, Lakha Patel Ni Pole, Shankadi Sheri, Manek Chowk, Ahmedabad has joined the firm as new partner on 01.04.1992.
>
> (b) (1) Kishor Shankarbhai Patel has retired as partner of the firm w.e.f. Dated 31.03.1992.“

8. Thus it is to be noted that even as per the Registrar of Firms and entry dated 18.10.2002, it is only mentioned that as per the application, Shri C.B.Patel has joined as new partner on 01.04.1992. There is no entry that said Shri C.B.Patel is the partner of firm w.e.f. 01.04.1992. However so far as one Kishor Shankarbhai Patel who has retired as partner of the firm is concerned, there is specific entry that he has retired as partner of the firm w.e.f. 31.03.1992. Thus, at the relevant time, when the suit was filed and the plaint was singed by Shri

C.B.Patel as partner, there was no entry with regard to change in the partnership firm and the name of Shri C.B.Patel was not registered as partner of the firm. So far as Shri C.B.Patel is concerned and singing of the plaint by him as partner is concerned, the trial Court has not committed any error in holding that the suit was filed by unregistered firm and was hit by Section 69(2) of the Indian Partnership Act. The trial Court has also considered the following decision of this Court in the case of ***V.J.Masarwala V/s. P.Sheth & co.*** reported in ***XX GLR 689*** holding that if there was a change in the partnership prior to the filing of the suit and no change in that regard was effected in the Register of Firms and if the name of the partner signing the plaint is not indicated in the registration extract, the suit was held to be not maintainable considering Section 69(2) of the Indian Partnership Act.

9. So far as the decision of the Hon'ble Supreme Court in the case of ***Sharad Vadant Kotak*** (*supra*) relied upon by the learned Advocate appearing on behalf of the appellant is concerned, it is required to be noted that considering the facts of

that case and the facts of the case on hand, the same is not of any assistance to the appellant. In the case before the Hon'ble Supreme Court, the suit was filed by founder partner of the firm, whose name included in Register of Firms, for dissolution of the firm and the controversy was whether registration of firm cease on reconstitution of the firm pursuant to induction of a new partner and whether fresh registration is required or not and/or whether there is need to inform change in the partnership.

10. Similarly, the decision of the Hon'ble Supreme Court in the case of ***Gwalior Oil Mills*** (*supra*) is also on facts not applicable and/or helpful to the appellant. In the case before the Hon'ble Supreme Court in Gwalior Oil Mills (*supra*), the suit was filed by reconstituted firm and the application for recording the changes was filed with the Registrar and thereafter, firm entered into a contract with another party and later filing a suit against that party for breach of contract and the suit was filed through one of its partners who prior to reconstitution was partner in his individual capacity and even subsequently Registrar recorded the

changes with retrospective effect from the date of actual reconstitution of the firm and in such circumstances, the Hon'ble Supreme Court held that apart from the fact that due to retrospective recording of changes by Registrar the reconstituted firm came into existence w.e.f. the date of its actual reconstitution. In the case before the Hon'ble Supreme Court, the suit was filed through one of its partners who prior to reconstitution was partner.

11. It is also required to be noted that the question whether the subsequent registration of the plaintiff's firm under the Indian Partnership Act could revive such suit or make the same competent at least from the date of registration during the pending suit came to be considered by the Hon'ble Supreme Court in the case of ***Raptakos Brett & Co. Ltd.*** (*supra*). However, the said point was considered but conclusive opinion has not been expressed by the Hon'ble Supreme Court.

12. Even the case of the appellant in the present appeal is that at the time of filing of the suit i.e. in the year 1996 firm was already dissolved and it has become proprietor firm and Shri C.B.Patel,

has singed as proprietor, however, it is found that the suit has been filed by the plaintiff M/s. Shankar Chemical as a partnership firm by submitting that the same is duly registered under the provisions of the Indian Partnership Act. Under the circumstances, it cannot be said that the trial Court has committed any error in dismissing the suit on the ground that there is discrepancy in the cause title itself as well as the suit is barred by Section 69(2) of the Indian Partnership Act.

13. For the reasons stated above, the appeal fails and deserves dismissal and accordingly it is dismissed.

[M.R.Shah, J.]

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